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Via Electronic Mail

Steven V. King
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
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Re: Docket No. U-140621 - Comments of Avista Utilities

Avista Corporation, dba Avista Utilities (Avista or Company), submits the following comments in accordance with the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to Comment on the Proposed Rules issued July 24, 2015, as filed with the Code Reviser, in Docket U-140621.

Avista appreciates the Commission's efforts to draft rules for attaching to poles in Washington and is grateful for the opportunity to provide the following comments on the Proposed Rules.

I. GENERAL COMMENTS ON THE PROPOSED RULES

The Proposed Rules to a large extent follow the pole attachment regulations promulgated by the Federal Communications Commission (FCC). Avista's primary concern is with the safe and efficient operation of its electric distribution system, and the Commission's adoption of FCC-type regulation would hamper Avista's efforts to maintain a safe and efficient system. Unfortunately, the Proposed Rules go even further than FCC rules to the detriment of safe and efficient utility operations. The Proposed Rule requirements that utilities expand capacity for communications companies, and that utilities permit overlashing without a sufficient opportunity

for utility oversight, exceed FCC requirements and sacrifice electric utility safety, reliability and efficiency simply for the convenience of communications companies. As explained below, Avista respectfully requests that these requirements be eliminated. In addition, Avista proposes that sanctions be added to help discourage unauthorized attachments and safety violations, and to assist utilities in their efforts to maintain a safe and reliable electric distribution system.

II. MANDATORY CAPACITY EXPANSIONS

Draft Rule 480-54-030(1) would require pole owners to replace existing poles with taller poles as long as the new attacher is willing to pay the cost, thus requiring electric utility pole owners to expend considerable resources to expand the capacity of their pole distribution system to accommodate communications attachers. This requirement is inconsistent not only with FCC rules but with the pole attachment rules in effect in every other state that regulates attachments. The federal Pole Attachment Act clearly allows utilities to deny access for lack of capacity, and this rule that utilities need not expand capacity to accommodate attaching entities has been upheld by the U.S. Court of Appeals for the 11th Circuit.¹ Requiring capacity expansions would unreasonably diminish the ability of electric utility personnel to perform their primary obligation of providing safe and reliable electric service, and would result in communications attachments on electric utility poles taking precedence over electric utility operations. The process of replacing poles with taller poles to accommodate communication attachers has been something that utilities have historically been willing to allow, as long as electric utility operations and other considerations are not adversely affected. Finally, communication companies have alternatives to pole replacements where exceptions might exist, such as installing wireline attachments underground and simply reconfiguring wireless deployment buildouts.

III. OVERLASHING

The overlashing provisions of the Proposed Rules would make it easy for communications companies to expand their facilities, but only by handicapping the ability of utility pole owners to analyze safety and reliability issues. The Proposed Rules would therefore sacrifice safety and reliability for the sake of convenient access.

¹ *Southern Co. v. FCC.*, 292 F.3d 1338, 1347 (11th Cir. 2002).

Overlashing new communication cable to cable already in place creates additional wind and ice load on the poles along with low sag issues, and these are serious safety concerns to pole owners. Moreover, without sufficient oversight and approval, cables that are no longer used are typically left in place rather than removed. Overlashing proposals can be more difficult to analyze for safety concerns than applications for new pole contacts, and while communication companies engineer for their own circuitry, they historically fail to account for their own existing code violations and for safety impacts related to the new overlash construction.

It is therefore Avista's strong recommendation that overlashing projects be submitted as an application like any other attachment so they can be evaluated with the same emphasis on safety and reliability as new pole attachments. At the very least, the Commission should reject the overlashing provisions in the rules and simply view FCC rulings on this issue as persuasive, in accordance with 480-54-010(2).

IV. SANCTIONS

Cable companies, CLECs and ILECs all compete for telephone, Internet and video customers. Incentives therefore exist for these providers to save money and add convenience by attaching or overlashing without permits, indefinitely delaying pole transfers, and failing to resolve code violations. Not surprisingly, speed to market and efforts to minimize costs result in poor engineering, unsafe installations, and inadequate oversight of communications company construction crews.

Avista believes that allowing utility pole owners to apply sanctions against communication attachers for having no contract or permit, for violating existing contracts, or for not resolving code violations in a timely manner, would reduce dramatically the number of unauthorized attachments, safety violations, and other contract violations by attachers. Unauthorized attachments, safety violations, failure to timely transfer facilities, and other problems can be avoided and the entire process made more efficient if attaching entities understand the importance of compliance.

Oregon's sanctions provisions have been highly effective in nearly eliminating the large numbers of unauthorized attachments in that State. Portland General Electric, for example, reported an extraordinary drop in the rate of unauthorized attachments from 30% to 1% following its imposition of unauthorized attachment penalties.

Avista therefore proposes that the Proposed Rules be modified to allow facility utilities to impose the following sanctions, which are consistent with those in effect in Oregon: (1) for unauthorized attachments, \$100 per attachment plus five years back rental; (2) for violations of the National Electrical Safety Code, \$200 per violation; (3) for violations of existing contracts, \$200 per violation; and (4) for attachments made without a contract, \$500 per attachment. Avista proposes not to require the same level of auditing and Commission oversight as is required in Oregon, because existing utility inspection programs should suffice. Instead, Avista proposes that, prior to imposing any sanctions, the facility utility provide the attacher with evidence sufficient to prove liability.

V. CONCLUSION

Avista appreciates the efforts of Commission Staff and the opportunity to provide these comments. If you have any questions regarding these comments, please contact me at 509-495-4975 or at linda.gervais@avistacorp.com.

Sincerely,

/s/Linda Gervais/

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